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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,313	07/23/2003	Keith Rea	031599/259285	8386
826	7590	03/23/2005	EXAMINER	
ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			BUECHNER, PATRICK M	
			ART UNIT	PAPER NUMBER
			3754	

DATE MAILED: 03/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/625,313

Applicant(s)

REA, KEITH

Examiner

Patrick M Buechner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7, 8 and 10 is/are rejected.
- 7) ☒ Claim(s) 6 and 9 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 7/23/03, 1/24/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4, 7 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Cheng US (5,884,523).

Cheng discloses a measuring and dispensing apparatus with a cup (1) having a flat upper edge (Figure 2) defining a top opening of the cup. Cheng also discloses a funnel shaped dispenser (21) for depositing the powder (column 2, lines 52-57). Cheng also discloses the dispenser having a receiving opening and an exit opening (Figure 3) and the receiving opening having a flat leveling edge (Figure 3). Cheng also discloses the leveling edge scraped across the top of the cup (column 2, lines 40-41) and the leveling edge concentrically abutted to the upper edge of the cup (Figures 1 and 4). Cheng also discloses inverting the apparatus dispenses the powder in the cup (column 2, lines 52-57).

Cheng also discloses the cup sized to contain a desired amount of ingredients (inherent in the device).

Cheng also discloses the funnel shaped dispenser as “substantially conical” (Figures 1, 3 and 4 show outer portion of 21 as conical, this meets the limitation “substantially conical”).

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Cheng also discloses the cup and dispenser have handle members (11 and 2 respectively) movable relative to each other by a “connection apparatus” (112 6th paragraph not invoked) shown in Figures 3 and 4.

3. Claims 1-4, 7 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Varpio (US 4,283,951).

Varpio discloses a measuring and dispensing apparatus with a cup (1) having a flat upper edge (11) defining a top opening of the cup. Varpio also discloses a funnel shaped dispenser (4) for depositing the powder (inherent in the use of the device). Varpio also discloses the dispenser having a receiving opening and an exit opening (Figure 2) and the receiving opening having a flat leveling edge (Figure 2). Varpio also discloses the leveling edge scraped across the top of the cup (column 3, lines 65-68, column 4, lines 1-9) and the leveling edge concentrically abutted to the upper edge of the cup (Figure 2). Varpio also discloses inverting the apparatus dispenses the powder in the cup (inherent in the use of the device).

Varpio also discloses the cup sized to contain a desired amount of ingredients (inherent in the device).

Varpio also discloses the funnel shaped dispenser as “substantially conical” (column 2, lines 56-60 disclose an inner surface of the dispenser as a truncated cone, this meets the limitation “substantially conical”).

Varpio also discloses the cup and dispenser have handle members (3 and 5 respectively) movable relative to each other by a “connection apparatus” (112 6th paragraph not invoked).

4. Claims 1, 2, 4, 5, 7, 8 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Ackerman.

Ackerman discloses a measuring and dispensing apparatus with a cup (4) having a flat upper edge (Figure 4) defining a top opening of the cup. Ackerman also discloses a funnel shaped dispenser (7) for depositing the powder (Applicant functionally claims the dispensing and the Ackerman device is capable of performing this function as the normal state of the device is as shown in Figure 1). Ackerman also discloses the dispenser having a receiving opening and an exit opening (Figures 3 and 4) and the receiving opening having a flat leveling edge (Figure 4). Ackerman also discloses the leveling edge scraped across the top of the cup (page 1, lines 87-98) and the leveling edge concentrically abutted to the upper edge of the cup (Figures 2 and 4). Ackerman does not disclose inverting the apparatus dispenses the powder in the cup but is capable of performing this function that is claimed by applicant.

Ackerman also discloses the cup sized to contain a desired amount of ingredients (inherent in the device).

Ackerman also discloses the cup and dispenser have handle members (2 and 8 respectively) movable relative to each other by a pin connection (rod 9 is the pin received in sleeve 12 on the handle 2).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ackerman in view of Newman US (200,149).

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Ackerman discloses all the limitations of claim 3, as discussed above in 4, with the exception of the dispenser portion being substantially conical.

Newman teaches a dispenser portion that is substantially conical.

It would have been obvious for one of ordinary skill in the art at the time the invention was made to provide the substantially conical shape of Newman to the dispensing portion of Ackerman, since Ackerman clearly recites the dispenser portion can have any shape (page 1, lines 87-89) and a conical shape for dispensing is notoriously old in the art for use in directing powdered materials to a specific dispensing point.

Allowable Subject Matter

7. Claims 6 and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Farrington (US 382,870), Cole (US 1,175,709) and Mafra (US 2,080,210).

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick M Buechner whose telephone number is (571) 272-4923.

The examiner can normally be reached on 6:30am-5:00pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on (571) 272-4906. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Gene Mancene
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